

Chapter 11.

Percentage of Overall DBE Goal to be Met Through Neutral Means

The Federal DBE Program requires state and local transportation agencies to meet the maximum feasible portion of their overall DBE goal using race-neutral means.¹ Each agency must determine whether the overall DBE goal can be met solely through race-neutral measures, or whether race-conscious program elements such as DBE contract goals are also needed. If the agency determines race-conscious measures are needed, it must project the portion of the overall DBE goal to be met through neutral and through race-conscious measures (such as DBE contract goals). Race-neutral program elements are initiatives that help all businesses or small businesses in general, including DBEs.

To summarize:

- If an agency determines that it can achieve its overall DBE goal by race-neutral means and that no race-conscious elements are appropriate or required, the agency would submit its program using only race-neutral means for USDOT approval. The agency would project that 100 percent of its overall DBE goal could be met through neutral means and that 0 percent would need to be met through race-conscious means.
- If a combination of neutral and race-conscious measures is determined by the agency to be needed to meet its overall DBE goal, the agency would project the relative portion of the overall DBE goal to be met through neutral and race-conscious means.

In recent years, GDOT has projected that one-half of its overall DBE goal would be met through neutral means (6 percentage points of its 12 percent overall DBE goal).

USDOT guidance concerning how transportation agencies should project the race-neutral/race-conscious division of their overall DBE goals includes the following:

- USDOT Questions and Answers about 49 CFR Part 26 addresses factors for federal aid recipients to consider when projecting the portion of their overall goal they will meet through race- and gender-neutral means.²
- USDOT “Tips for Goal-Setting” also suggests factors to consider when making such projections.³
- An FHWA template for how it considers approving state DOTs’ DBE goal and methodology submissions includes a section on projecting the percentage of the overall

¹ 49 CFR Section 26.51.

² See <http://www.dotcr.ost.dot.gov/Documents/Dbc/49CFRPART26.doc>.

³ <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>.

DBE goal to be met through neutral and race-conscious means. An excerpt from this template is provided in Figure 11-1.

Based on 49 CFR Part 26 and the above sources, general areas of questions that transportation agencies might ask in performing this analysis include:

- A. Is there evidence of discrimination within the local transportation contracting marketplace for any racial/ethnic/gender group presumed to be socially and economically disadvantaged under the Federal DBE Program? If not, then the agency should only implement neutral remedies and no race-conscious remedies.
- B. What has been the past experience of the agency in meeting its overall DBE goal? Does the agency have a history of not meeting or exceeding its overall DBE goal?
- C. What has DBE participation been when the agency did not apply contract goals (or other race-conscious remedies)?⁴
- D. What is the extent and effectiveness of race-neutral efforts that the agency could have in place for the next fiscal year? What new neutral efforts are ready for immediate implementation?

Chapter 11 is organized around each of the topics discussed above, followed by a discussion of other considerations (Part E) and a summary (Part F).

**Figure 11-1.
Excerpt from Explanation of Approval
of [State] DBE Goal Setting Process for
FY [Year]**

You must also explain the basis for the State's race-neutral/race-conscious division and why it is the State's best estimate of the maximum amount of participation that can be achieved through race-neutral means. There are a variety of types of information that can be relied upon when determining a recipient's race-neutral/race-conscious division. Appropriate information should give a sound analysis of the recipient's market, the race-neutral measures it employs and information on contracting in the recipient's contracting area. Information that could be relied on includes: the extent of participation of DBEs in the recipient's contracts that do not have contract goals; past prime contractors achievements; excess DBE achievements over past goals; how many DBE primes have participated in the state's programs in the past; or information about state, local or private contracting in similar areas that do not use contracting goals and how many minority and women's businesses participate in programs without goals.

Source: FHWA, Explanation for Approval of [State] DBE Program Goal Setting Process for FY [Year]. http://www.fhwa.dot.gov/civilrights/dbe_memo_a4.htm

⁴ USDOT guidance suggests evaluating (a) certain DBE participation as prime contractors if the DBE contract goals did not affect utilization, (b) DBE participation as prime contractors and subcontractors for agency contracts without DBE goals, and (c) overall utilization for other state, local or private contracting where contract goals are not used.

A. Is there evidence of discrimination within the local marketplace for any racial/ethnic/gender group presumed to be socially and economically disadvantaged under the Federal DBE Program?

In narrowly tailoring its implementation of the Federal DBE Program to reflect local marketplace conditions, an agency that determines race-conscious measures are necessary needs to consider whether any race-conscious remedies (such as DBE contract goals) should be restricted to certain DBE groups. If so, the portion of the goal pertaining to the DBE groups for which race-conscious measures would not apply might be counted toward the projection of what will be attained through neutral means.

Chapter 9 summarizes information the study team analyzed concerning the Georgia transportation contracting marketplace:

- There is some quantitative and qualitative evidence of disadvantages related to race, ethnicity and gender.
- There is some evidence of disadvantages for each racial, ethnic and gender group presumed to be socially disadvantaged under the Federal DBE Program. This evidence includes disparities in the utilization of each group in GDOT transportation contracts when DBE contract goals were not applied.

GDOT will need to review disparity study results and other information it has available in order to make a determination as to whether any DBE group would be eligible for any future race-conscious measures such as DBE contract goals (or whether no race-conscious measures apply).

If there is no need for race-conscious measures for any DBE group, the agency would project that 100 percent of its overall DBE goal would be met through neutral means.

B. What has been the past experience of the agency in meeting its overall DBE goal?

BBC examined GDOT's past experience in meeting its overall DBE goal, including whether GDOT had a history of not meeting or exceeding its overall DBE goal. Based on data starting in FY 2007, it does not appear that GDOT fell substantially short of its past overall annual DBE goals nor does it appear that the agency substantially exceeded them, as explained below.

GDOT has set an overall annual goal for DBE participation of 12 percent from FY 2007 through FY 2011. GDOT's measurements of DBE utilization indicated levels within about 2 percentage points of the annual goal for three of these five fiscal years. In FY 2009, utilization was 2.7 percentage points below the goal. Figure 11-2 presents DBE goals for each year and GDOT's reported DBE attainment for each year.

Figure 11-2.
GDOT-reported DBE attainment and overall DBE goal, by fiscal year

Fiscal year	DBE attainment	Annual DBE goal	Difference
2007	13.3 %	12.0 %	1.3 %
2008	11.8	12.0	(0.2)
2009	9.3	12.0	(2.7)
2010	10.4	12.0	(1.6)
2011	9.8	12.0	(2.2)

Note: Numbers rounded to nearest tenth of 1 percent.

Source: GDOT reports.

BBC independently measured DBE utilization for 2009 through June 2011. According to BBC's analyses, DBEs obtained 10.1 percent of the FHWA-funded contract dollars that GDOT awarded from 2009 through June 2011.

C. What has DBE participation been when GDOT has not applied contract goals (or other race-conscious remedies)?

DBE participation that is projected to result from neutral programs should be counted as such when projecting the portion of the overall DBE goal that could be met through neutral means. Further, any time a DBE wins a prime contract or subcontract through customary competitive purchasing procedures (i.e., the firm is not placed at an advantage because of a DBE contract goal), that DBE utilization can also be considered as race-neutral participation.

BBC examined results of the utilization and disparity analyses and other research in this study to review participation of minority- and women-owned firms when race-conscious programs did not apply during the study period.

1. DBE participation for GDOT contracts when the Federal DBE Program did not apply.

BBC first examined participation of firms certified as DBEs on GDOT contracts when no race- or gender-conscious programs applied.

- GDOT did not set DBE contract goals on its state-funded contracts during the study period. BBC identified DBE participation of 3.6 percent on GDOT contracts on state-funded contracts (including prime contracts and subcontracts as shown in Figure 6-2 in Chapter 6).
- DBEs obtained 1.9 percent of prime contract dollars on GDOT FHWA- and state-funded contracts. Race- or gender-conscious programs did not affect utilization of DBEs as prime contractors or prime consultants.

Of the two measures, the 3.6 percent utilization results are more comprehensive as they include DBE participation as prime contractors and subcontractors.

2. Disparity analysis results for GDOT contracts when no race- or gender-conscious programs applied. The results discussed above only pertain to GDOT's utilization of firms certified as DBEs. The goal-setting analysis in Chapter 10, however, also includes minority- and women-owned firms that are not currently certified as DBEs and appear that they might be eligible for DBE certification. Therefore, it is also instructive to examine the results for minority- and women-owned firms (which includes DBEs and non-certified MBEs and WBEs) when examining past utilization.

- Including certified DBEs and non-certified firms, minority- and women-owned firms received 5.5 percent of GDOT state-funded contract dollars.
- Minority- and women-owned firms received 3.2 percent of GDOT prime contract dollars on FHWA- and state-funded contracts.

The results indicating 5.5 percent MBE/WBE participation are more comprehensive as they include utilization as prime contractors and subcontractors.

It is important to note that non-certified minority- and women-owned firms would need to become certified as DBEs for GDOT to be able to count them in DBE participation reports. Some of the MBE/WBEs utilized by GDOT might not meet the criteria for DBE certification. Even so, GDOT should consider the results for past MBE/WBE participation when projecting the portion of its overall DBE goal to be met through neutral measures.

3. Other information. Chapter 4 and supporting appendices present results that include some evidence of disparities for minority- and women-owned firms in the Georgia marketplace.

D. What is the extent of race-neutral efforts that the agency could have in place for the next fiscal year?

BBC reviewed GDOT's existing and planned neutral measures that are part of its implementation of the Federal DBE Program. BBC also identified measures that GDOT might consider for future implementation. There may be a number of reasons why certain of these additional measures are not practicable, and there could be neutral remedies in addition to those discussed here that GDOT might consider.

1. Current GDOT neutral programs. GDOT currently implements a broad range of neutral measures to increase participation of DBEs in its FHWA-funded contracts. GDOT plans to continue these neutral measures in the future. In addition to GDOT, many national and local organizations implement small business development programs in Georgia.

Figure 11-3 lists examples of neutral measures provided in 49 CFR Section 26.51(b).

Figure 11-3.
Examples of neutral measures listed in federal regulations

Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces).

Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing).

Providing technical assistance and other services.

Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate).

Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses.

Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency.

Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low.

Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Source: 49 CFR Section 26.51(b).

GDOT is already implementing the types of measures listed in Figure 11-3. Examples of these and other existing neutral measures are provided below.

- GDOT has a supportive services contract that provides training and other assistance regarding bonding, financing, business management, technology, business growth and development, and information on how to do business with GDOT. These services are available to established and start-up firms.
- Firms can access prime contractor, subcontractor and DBE directories on the GDOT website. GDOT also provides a searchable DBE database on its website that allows prime contractors to identify DBEs based on name, subindustry or location.
- GDOT currently posts on its website lists of potential bidders for its construction contracts that are available to DBEs and other small businesses seeking subcontracting opportunities. Firms interested in subcontracts on a project can identify themselves to potential bidders on the GDOT website.

- GDOT's prompt pay policy requires that prime contractors pay their subcontractors for satisfactory performance of their work no later than 10 days from receipt of each payment from GDOT.
- Prime contractors are not allowed to withhold retainage from subcontractors (GDOT no longer withholds retainage on payments for contracts).

2. Business assistance programs available in Georgia. In addition to GDOT neutral measures, a number of organizations throughout Georgia are implementing efforts to assist small businesses, including minority- and women-owned businesses. Figure 11-4 provides examples of technical assistance, financing, bonding, mentor-protégé and networking programs. GDOT interacts with many of these programs through its own supportive services effort.

Figure 11-4.
Examples of small business assistance and other neutral programs available in Georgia

Neutral remedies	
Technical assistance	<p>Technical assistance such as small business training is widely available throughout Georgia. Programs provide general information and assistance for business start-ups and growing businesses. Examples include general support providers such as SCORE, the U.S Small Business Administration, the State of Georgia's First Stop Business Information Centers, The Georgia Department of Economic Development, Small Business Development Centers, the Georgia Micro Enterprise Network, The Resource Institute, The Edge Connection at Kennesaw State University, the Women's Economic Development Agency, and business groups including minority and women business chambers. There is also industry-specific training opportunities from organizations such as the Georgia Tech Enterprise Innovation Institute and the Georgia Manufacturing Extension Partnership. The Greater Atlanta Economic Alliance administers the Small Business Transportation Resource Center in partnership with the USDOT Office of Small and Disadvantaged Business Utilization. The SBTRC provides assistance, training and counseling to DBEs and small businesses interested in transportation-related projects.</p> <p>Other programs focus on market development assistance and use of electronic media and technology. These assistance programs are available through organizations such as Procurement Technical Assistance Centers throughout the state.</p>
Small business finance	<p>Small business financing is available through several local agencies in Georgia. A number of organizations support small businesses with training and loan package preparation related to different SBA loan programs. Some agencies will help firms evaluate whether they qualify for SBA and conventional loans.</p> <p>The USDOT Short Term Lending Program provides low-cost working capital loans for up to \$750,000 for firms performing transportation-related contracts. Citizens Trust Bank is a local STLP participating lender.</p>
Bonding programs	<p>Programs such as the SBA Surety Bond Guarantee Program provide bid, performance and payment bond guarantees for individual contracts.</p> <p>The USDOT has operated a number of bonding assistance programs as well, including the Bonding Education Program and the Disadvantaged Business Enterprise American Recovery and Reinvestment Act Bonding Assistance Reimbursable Fee Program (DBE ARRA BAP).</p> <p>Training on how to obtain a bond is also provided by a number of different agencies including the Greater Atlanta Economic Alliance, the Greater Women's Business Council and Minority Business Development Centers.</p>
Mentor-protégé programs	<p>The SBA 8(a) Business Development Mentor-Protégé Program is an example of a mentor-protégé program that pairs subcontractors with prime contractors to assist in management, financial and technical assistance and the exploration of joint venture and subcontractor opportunities for federal contracts. The Georgia Minority Supplier Development Council (GMSDC) administers the Georgia Mentor Protégé Connection in partnership with the Georgia Department of Economic Development (GDEC) and Georgia Tech's Enterprise Innovation Institute. The Greater Women's Business Council's mentor-protégé program is one example of a not-for-profit organization's program.</p>
Business networking	<p>Many organizations in Georgia offer networking opportunities for small businesses including minority- and women-owned businesses. Examples include the Georgia Minority Supplier Development Council, local chambers of commerce, and minority and women business chambers.</p>

Source: BBC Research & Consulting.

3. Additional neutral efforts planned as part of GDOT's Small Business Enterprise (SBE) Program. The Final Rule effective February 28, 2011 added a requirement for transportation agencies to foster small business participation in their contracting. USDOT set a deadline of February 28, 2012 for state and local agencies to submit a small business program element for review.

GDOT submitted a small business program element to FHWA that proposed a number of efforts to assist small business enterprises (SBEs).

Program measures assisting small prime contractors and subcontractors. GDOT's SBE Program includes the following elements.

- Encouraging prime contractors to waive bonding or assist SBE subcontractors in obtaining bonding.
- Encouraging staged bonding where feasible, when bonding is carried over from one project state to the next.
- Relaxing bonding requirements for projects less than \$25,000.
- Unbundling large contracts to open more contracting opportunities for SBEs.
- Providing information on GDOT's contracting needs and offer instructions on bid specifications, procurement policy, procedures and general bidding requirements.
- Providing specifications and requests for proposals to the SBE community in a timely manner to allow SBEs adequate time to develop responsible and responsive bids. In instances where the cost of obtaining specifications or requests for proposals is prohibitive, GDOT will make copies of the materials available to SBE development agencies at no charge.
- Encouraging prime contractors to pro-rate payment and delivery schedules, where feasible, to minimize cash flow problems faced by small firms. GDOT will provide guidance to SBE contractors regarding maintenance of positive cash flow in order to meet financial obligations.
- Using debriefing sessions to explain why certain bids were unsuccessful.
- Maintaining records showing specific efforts to identify and award contracts to SBEs and establishing a monitoring system to ensure that all contractors, subcontractors, consultants and vendors comply with contract specifications related to SBE utilization.
- Informing SBEs of bid notices and specifications related to their capabilities by placing bid notices in major local newspapers and other periodicals. Bid notices may also be sent to local trade associations, technical assistance agencies, economic development groups and SBEs with capabilities relevant to the bid notice. Lists of potential firms bidding as primes may also be made available to SBEs.

Subcontracting elements of program. GDOT included a number of SBE program elements to encourage prime contractors to use small businesses as subcontractors in GDOT contracts:

- Any contractor receiving a federally-funded contract with GDOT shall agree that small businesses will have the maximum practicable opportunity to participate in the contract consistent with its efficient performance.
- Prime contracts shall show Good Faith Effort in soliciting and accepting bids from SBEs.
- Prime contractors are to maintain records on all subcontracting performed by SBEs.

Local agency participation in the SBE Program. GDOT's plan requires local agencies receiving federal funds administered by GDOT to comply with the SBE Program.

Summary. If fully implemented, and if a broad set of small businesses are eligible and actually participate in the program, GDOT's SBE Program might increase participation of DBEs. At this time, it is difficult to quantify the potential effect of the SBE Program. GDOT had not received feedback from FHWA concerning its SBE Program at the time of this report. GDOT may further refine the program based on FHWA comments.

4. Additional neutral programs for GDOT consideration. In addition to its existing and planned neutral measures, GDOT might consider the neutral program elements presented below.

Some of these program elements were identified by USDOT in its Final Rule effective February 28, 2011:

- Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).
- In multi-year design-build contracts or other large contracts (e.g., for "megaprojects"), requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

The BBC study team suggests additional neutral measures for GDOT review. These include:

- Changes to GDOT's systems for prequalifying construction contractors, prequalifying consultants and evaluating consultants' qualifications statements; and
- Construction contractor assistance program.

Small business set-aside program for prime contractors and consultants. GDOT might consider employing a small business set-aside program for small construction and engineering-related contracts that are not legally required to be publicly bid. Program participants certified as small businesses would be able to compete with one another for contracts. GDOT would establish a dollar limit for these contracts, and then consider application of the program for contracts under that ceiling on a case-by-case basis.

A small business set-aside program may help encourage small businesses, including DBEs, to compete for smaller GDOT contracts by limiting the competition to similarly-sized firms. GDOT would need to restrict the program to firms that were certified as small business enterprises in accordance with federal guidance.

Requiring bidders on very large contracts to specify elements of the contract that are of a size that small businesses, including DBEs, can reasonably perform. On any large construction project, GDOT might require bidders to document that they have broken out subcontract opportunities of sizes suitable for small subcontractors, including DBEs.

Subcontracting minimum. GDOT might consider a measure that would encourage a larger amount of subcontracting on GDOT contracts. Even without DBE contract goals, DBEs' share of GDOT subcontract dollars is much greater than DBEs' share of GDOT prime contract dollars (see Chapter 8).

GDOT might consider an initiative similar to the City of Los Angeles' Mandatory Subcontracting Minimum (MSM) program.

- For each contract above a certain dollar amount, GDOT would set a percentage to be subcontracted based on an analysis of the work to be performed and past experience with similar contracts (different types of projects would involve greater or smaller amounts of subcontracting). For some contracts, GDOT could set no MSM.
- Prime contractors bidding on the contract would need to subcontract a percentage of the work equal to or exceeding the minimum for their bids to be deemed responsive.
- The program would need to be flexible, including the opportunity for the prime contractor to request a waiver (preferably before time of bid so that the waiver would apply to each prime).

An MSM program corresponds to a neutral remedy listed in the Federal DBE Program, which suggests that agencies could promote participation of all small businesses, including MBE/WBEs, by “requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces.”⁵

GDOT would need to consider whether the program described here is permitted under state law.

Alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts. Alternative bid evaluation would allow GDOT to consider factors other than price when awarding contracts. GDOT could explore a pilot program that would encourage large prime contractors to joint venture with smaller contractors including DBEs, or for small contractors to join in a joint venture. Either approach might foster opportunities for smaller firms to gain experience as prime contractors. GDOT would need to consider whether the program described here is permitted under state law.

Prequalification for construction prime contractors. GDOT should review its prequalification procedures to ensure that they do not act as barriers to smaller and newer firms as well as firms with less past success competing for GDOT contracts. There may be aspects of the prequalification process that work to perpetuate disparities for minority-owned firms, which have been relatively unsuccessful in obtaining GDOT construction prime contracts compared with other groups.

GDOT should review its practice of prequalifying for dollars of GDOT work that can be performed. Because bonding is already required under state law for larger contracts, GDOT’s practice of prequalifying for dollars of work performed may represent an additional barrier for smaller contractors. Chapter 8 of the report explains how this aspect of GDOT prequalification may affect certain groups of firms.

As explained in Chapter 8, GDOT’s current prequalification process for construction prime contractors appears to advantage contractors that:

- Have worked for GDOT in the past and have received high scores for that work.
- Have more equity in the firm, especially cash and accounts receivable compared with their current liabilities.
- Have more plant and equipment used for road construction.

This process may disadvantage smaller, younger firms in general. It may have an added negative impact on minority- and women-owned firms (see Chapter 8).

⁵ 49 CFR Section 26.51(b)(1).

State law requires GDOT to prequalify construction contractors. Even so, GDOT might be able to modify the factors and scoring system or add flexibility in how prequalification is applied. Such steps might lessen potential negative effects on small businesses.

- For example, GDOT might consider raising the \$2 million contract size threshold that requires prequalification.
- GDOT might review whether it could limit prequalification of construction prime contractors to consideration of past work, using a system similar to its registration process for construction subcontractors.
- Alternatively, GDOT might consider a prequalification system for construction contractors based on qualifications for specific types of work, similar to its system for consultants.

Prequalification of consultants. Consultants seeking GDOT engineering-related contracts must be prequalified by “area classes,” which pertain to specific types of work. Firms submit applications to be prequalified for each area class. GDOT can approve a firm for one area class and deny an application for another area class.

GDOT approved about two-thirds of the area class applications submitted by majority-owned firms and 47 percent of area class applications submitted by minority-owned firms. (The approval rate for WBEs exceeded majority-owned firms, as discussed in Chapter 8.)

GDOT might review its prequalification process for area classes to identify whether there are factors in the process that disadvantage minority-owned firms. Any such changes might benefit all small businesses seeking area classes.

Evaluation of consultants’ qualifications statements. Once firms are prequalified for GDOT consulting contracts, they compete for specific contracts by submitting qualifications statements. GDOT evaluates the qualifications statements to determine a “short-list” of firms to be asked for interviews. GDOT typically makes a consultant selection after conducting interviews with short-listed firms.

GDOT employs a scoring system when evaluating qualifications statements and interviews. BBC compared evaluation scores received by majority-owned firms with those for MBEs and WBEs submitting qualifications statements. On average, more than one-half of firms submitting qualifications statements are short-listed for an interview. One of the six submissions by minority-owned firms resulted in short-listing. GDOT’s scores for MBE submissions were lower than scores assigned to majority-owned firms in three of the four evaluation categories:

- **Stability and resources.** One of the evaluation factors is the financial stability, litigation history and general history of the firm.
- **Experience and qualifications.** Evaluators consider the experience and qualifications of the proposed consultant team in light of the scope of the project, work classes involved, and GDOT policies.

- **Suitability.** GDOT reviews the ability of the firm to do the work, including specialized qualifications and the capacity of the consultant team to accomplish the work given current staff workloads.

GDOT might review the factors considered to ensure that they do not negatively affect minority-owned firms. GDOT may also need to train evaluators to make sure they do not implement the scoring system in a way that negatively impacts minority-owned firms. Any such changes may benefit all small businesses.

GDOT might consider small business preferences in its scoring of consultants (to the extent that state law permits). For example, when evaluating proposals for engineering contracts, GDOT might include five evaluation points out of 100 to be awarded based on certified small business status of the prime consultant.

GDOT might also consider a new evaluation category that considers the contract dollars a consultant currently has with GDOT, with points awarded to consultants with less or no current work (and zero points to the proposer with the most current work). As with other neutral measures, GDOT should consider whether this change would be permitted under state law.

Construction contractor assistance program. The BBC study team's review of business assistance resources in Georgia identified a wide range of general assistance for start-up and emerging businesses but less assistance to established construction firms seeking to grow into larger prime contractor roles. Focusing on established construction companies interested in further developing their capabilities, GDOT might consider ways to further expand one-on-one counseling, mentor-protégé programs, and referrals to experts in finance and bonding. This assistance would be open to all small firms regardless of race or gender.

Other neutral measures for GDOT consideration. The neutral measures discussed here provide a broad spectrum of programs or actions for GDOT to consider, but is by no means exhaustive. GDOT should review programs that other agencies have implemented and seek additional input from the local small business and DBE business communities. Appendix L contains comments about such programs from individuals and groups that reviewed the draft disparity study report.

Implications for projecting the neutral portion of overall DBE goal. An agency implementing the Federal DBE Program is required to meet the maximum feasible portion of its overall DBE goal by using workable neutral means to facilitate DBE participation in its contracts. An agency is not required to implement every conceivable race-neutral alternative, but must engage in serious, good-faith consideration of workable race-neutral alternatives. Its consideration of those neutral measures should be reflected in its projection of the portion of the overall DBE goal to be achieved through neutral means.

A number of issues arise when an agency considers the impact of possible neutral measures:

- When projecting the portion of the overall DBE goal to be achieved through neutral means, USDOT requires agencies to evaluate the time frame necessary for implementation. Programs that may require years to develop should not be reflected in projections of the impact of neutral remedies for the next fiscal year. GDOT should account for this factor in making its projection.
- In addition, it will be difficult for GDOT to assess the potential impact of additional neutral measures on DBE participation until it has reviewed them, chosen those for implementation, successfully implemented them, and then evaluated their effectiveness.

Implications for state-funded contracts. GDOT discontinued its race- and gender-conscious program for state-funded contracts in the 1990s. To the extent permitted under state law, neutral efforts GDOT adopts related to its FHWA-funded contracts should be applied, where feasible, to state-funded contracts. GDOT should also collect data on MBE/WBE and DBE participation on state-funded contracts to help it assess the impact of its neutral programs.

E. Other Considerations

The following considerations are also important in GDOT's implementation of the Federal DBE Program.

Adjustments as GDOT implements the Federal DBE Program. GDOT will need to monitor the effectiveness of any race-conscious measures and its race-neutral measures during the course of an entire fiscal year.⁶

- Before the fiscal year is complete, GDOT might find that DBE utilization on FHWA-funded contracts will substantially exceed its overall DBE goal within the fiscal year. It would need to adjust the extent to which it uses any race-conscious measures if this outcome occurs.
- Similarly, GDOT might reach a mid-year decision to increase the extent to which it uses race-conscious remedies if it finds that the measures in place are not effective in reaching its overall DBE goal.

Firms potentially eligible for DBE certification. The Federal DBE Program requires GDOT to prepare DBE utilization reports based on firms actually certified as DBEs.⁷ However, many of the minority- and women-owned firms examined in this disparity study are not currently certified even though they might be eligible for certification (based on their annual revenue). GDOT should encourage and facilitate certification for such firms.

⁶ 49 CFR Section 26.51(f)(2).

⁷ See 49 CFR Section 26.55(f) and 26.87(i).

As discussed in Chapters 5 and 10, BBC's analysis of the base figure for GDOT's overall DBE goal includes minority- and women-owned firms that might be eligible for DBE certification but have not chosen to pursue certification.

- One reason that future DBE utilization on GDOT contracts could fall below GDOT's overall DBE goal is that many of the minority- and women-owned firms doing business with GDOT are not currently DBE-certified.
- GDOT should examine factors in addition to its utilization of certified DBEs to evaluate the effectiveness of its programs, as discussed below.

Tracking minority- and women-owned firms that are not currently certified as DBEs.

GDOT will need to track the effectiveness of neutral programs for both FHWA- and state-funded contracts, including preparing additional utilization reports that include all minority- and women-owned firms.⁸ GDOT should:

- Use the BBC database developed as part of this study as a starting point for tracking MBE/WBE utilization;
- Request that firms doing business with GDOT as a prime contractor or subcontractor identify race/ethnicity/gender ownership to facilitate tracking purposes;
- Collect and analyze MBE/WBE utilization in addition to DBE utilization for prime- and subcontractor utilization on both FHWA- and state-funded contracts, and for GDOT and local agency contracts; and
- Continue to prepare reports on the participation of certified DBEs in FHWA-funded contracts, as required under the Federal DBE Program.

Monitoring changes in the Federal DBE Program. The Federal DBE Program regulations periodically change, and USDOT also issues new guidance concerning implementation of the Program. GDOT should monitor these developments.

Other transportation agencies' implementation of the Federal DBE Program is under review in federal court. GDOT should continue to monitor relevant court decisions in these and other cases.

F. Summary

GDOT should review all of the analyses in Chapter 11 and the balance of the disparity study, and any additional information it has available, when determining whether it will meet its overall DBE goal solely through neutral measures, or when projecting the portion of the overall DBE goal to be achieved through neutral efforts. Its specific neutral projection will depend on the level of overall DBE goal it adopts.

⁸ Including MBE/WBEs that are self-identified.